

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34549

**ILLINOIS RAILNET, INC. – ACQUISITION AND
OPERATION EXEMPTION – THE BURLINGTON
NORTHERN AND SANTA FE RAILWAY COMPANY**

**UNITED TRANSPORTATION UNION’S REDACTED
SUPPLEMENTAL PETITION TO REVOKE EXEMPTION**

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United Transportation Union (“UTU”) respectfully submits its Supplemental Petition to Revoke in the above-referenced transaction. UTU challenges the bona fides of the transaction to protect the integrity of the Surface Transportation Board’s processes.

On September 27, 2004, Illinois Railnet, Inc. (“Illinois”) filed a Verified Notice of Exemption pursuant to 49 U.S.C. § 10902 and 49 C.F.R. 1150.4. In this transaction, Illinois executed an agreement with The Burlington Northern and Santa Fe Railway Company (“BNSF”) for Illinois to acquire and operate two lines of railroad, a portion of BNSF’s Oregon Subdivision between MP 98.75 at Oregon, IL, and MP 105.78 at Mt. Morris, IL (“the Mt. Morris Line”), and a portion of BNSF’s La Salle Subdivision between MP 25.7 at La Salle, IL, and MP 43.36 at Zearing, IL (the La Salle Line”). The subject rail lines total approximately 24.7 miles in length and serve Ogle, La Salle, and Bureau Counties, IL. In addition, in another transaction, BNSF granted Illinois limited local trackage rights for the purpose of servicing customers on BNSF in and around Oregon, IL, and limited overhead rights for the purpose of interchanging traffic between BNSF and Illinois and accommodating light power moving over BNSF’s lines between MP 98.49 near Oregon, IL, and MP 86.57 near Flag Center, IL, and between MP 43.36 near Zearing, IL, and MP 40.73 near Montgomery, IL (“Joint Trackage”).

On January 26, 2005, UTU filed its Petition to Revoke, to which Illinois responded on February 10, 2005. UTU has since received discovery from Illinois, which is basically the subject of this filing.

SUPPLEMENTAL FACTS

As noted above, Illinois acquired the portion of BNSF’s Oregon Subdivision between MP 98.75 at Oregon, IL and MP 105.78 at Mt. Morris, IL in this transaction. It also obtained limited local

trackage rights in and around Oregon, IL and limited overhead rights for the purpose of interchanging traffic between BNSF and Illinois and accommodating light power moving over BNSF's lines between MP 98.49 near Oregon, IL and MP 86.57 near Flagg Center, IL. However, Illinois has been running its trains between MP 98.49 near Oregon to MP 100.6 to serve the sand plants at Unimin (Borden) and H.A. International (Borden) west of downtown Oregon without obtaining any authority from the Board in either Finance Docket No. Nos. 39549 and 39559.

In addition to this unauthorized operation over the trackage between MP 98.49 and MP 100.6,

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Prior to these transactions, BNSF employees, some of whom are represented by UTU, provided all service on these tracks without the use of a third party carrier like Illinois. This work was all done subject to the UTU/BNSF collective-bargaining agreement. This work will now all be done by Illinois.

ARGUMENT

Under 49 U.S.C. § 10505(d), the Board may revoke an exemption if it is found that regulation is necessary to carry out the rail transportation policy of 49 U.S.C. § 10101a. Labor interests may raise issues concerning the appropriate level of labor protection in a petition for revocation. *See* 49 U.S.C. § 10505(g)(2) and *Simmons v. ICC*, 900 F.2d 1023 (7th Cir. 1990). In addition, to the extent a party wishes to challenge the bona fides in a transaction, the Board retains the right to review the transaction to protect the integrity of its processes. *Minnesota Comm. Ry., Inc. – Trackage Exempt.-- BN RR. Co.*, 8 I.C.C.2d 31 (1991). The party seeking to revoke an exemption must meet its burden of proof by articulating reasonable, specific concerns to satisfy the revocation criteria. *Wisconsin Central Ltd., – Exemption Acquisition and Operation – Certain Lines of Soo Line Railroad*

Company, Finance Docket No. 31102 (ICC served July 28, 1988), and *Minnesota, supra*, at p.35. *Accord, Norfolk Southern Railway Company – Trackage Rights Exemption – Norfolk and Western Railway Company*, Finance Docket No. 32661 (STB served Feb. 21, 1996).

This case involves several unusual features which can only lead one to conclude the transaction is a device created merely to move a number of jobs out from under a collective-bargaining agreement onto a nonunion carrier. The circumstances surrounding the transaction indicate that the transaction was not motivated by a desire of the parties to realize legitimate business goals. Illinois was not a logical entity to be considered as the operator. Illinois was clearly created for this transaction, one of many facts that make it like the transaction in *Sagamore National Corporation – Acquisition and Operation Exemption – Lines of Indiana Hi-Rail Corporation*, Finance Docket No. 32523, *et al.* (I.C.C. served Oct. 28, 1994).

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In addition, Illinois did not receive proper authority to operate over the trackage at MP 98.49 to MP 100.6 to serve the sand plants. Illinois argues that it has sought approval for joint trackage rights anywhere in Oregon, IL. However, it makes no specific mention of this trackage anywhere in its filings or agreements. It simply mentions service to customers in Oregon over its track, however, this appears to be a reference to customers on the specified lines, i.e., MP 98.49 to 86.57. In any event, Illinois and BNSF should be required to specify the milepost numbers instead of just simply stating the name of a city and the trackage therein. If this type of loose descriptive filing is permitted, some carriers may abuse the process in labor protective situations and state that the trackage involved was not covered by the transaction. UTU simply wants to eliminate that possibility and have the trackage specifically identified.

CONCLUSION

Hence, the notice of exemption should be revoked.

Respectfully submitted,

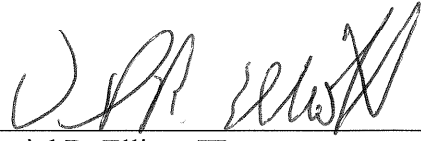
A handwritten signature in black ink, appearing to read "DRE Elliott", is written over a horizontal line.

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing United Transportation Union's Supplemental Petition to Revoke Exemption has been served this 6th day of June 2005 via first-class, postage pre-paid mail upon the following:

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